

# House Bill 3408

Sponsored by COMMITTEE ON JUDICIARY

## SUMMARY

The following summary is not prepared by the sponsors of the measure and is not a part of the body thereof subject to consideration by the Legislative Assembly. It is an editor's brief statement of the essential features of the measure **as introduced**.

Modifies provision authorizing placement of irrigation property by certain special districts or corporations as outright permitted use on land zoned for exclusive farm use. Affects irrigation property of irrigation districts, drainage districts, water improvement districts, water control districts and specified corporations.

## A BILL FOR AN ACT

1  
2 Relating to irrigation property; amending ORS 215.213 and 215.283.

3 **Be It Enacted by the People of the State of Oregon:**

4 **SECTION 1.** ORS 215.213 is amended to read:

5 215.213. (1) In counties that have adopted marginal lands provisions under ORS 197.247 (1991  
6 Edition), the following uses may be established in any area zoned for exclusive farm use:

7 (a) Churches and cemeteries in conjunction with churches.

8 (b) The propagation or harvesting of a forest product.

9 (c) Utility facilities necessary for public service, including wetland waste treatment systems but  
10 not including commercial facilities for the purpose of generating electrical power for public use by  
11 sale or transmission towers over 200 feet in height. A utility facility necessary for public service  
12 may be established as provided in ORS 215.275.

13 (d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the  
14 farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild,  
15 grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm  
16 operator does or will require the assistance of the relative in the management of the farm use and  
17 the dwelling is located on the same lot or parcel as the dwelling of the farm operator.  
18 Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS  
19 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or  
20 other financing secured by the dwelling and the secured party forecloses on the dwelling, the se-  
21 cured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure  
22 shall operate as a partition of the homesite to create a new parcel.

23 (e) Nonresidential buildings customarily provided in conjunction with farm use.

24 (f) Primary or accessory dwellings customarily provided in conjunction with farm use. For a  
25 primary dwelling, the dwelling must be on a lot or parcel that is managed as part of a farm opera-  
26 tion and is not smaller than the minimum lot size in a farm zone with a minimum lot size acknowl-  
27 edged under ORS 197.251.

28 (g) Operations for the exploration for and production of geothermal resources as defined by ORS  
29 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of  
30 compressors, separators and other customary production equipment for an individual well adjacent

**NOTE:** Matter in **boldfaced** type in an amended section is new; matter [*italic and bracketed*] is existing law to be omitted. New sections are in **boldfaced** type.

1 to the wellhead. Any activities or construction relating to such operations shall not be a basis for  
 2 an exception under ORS 197.732 (2)(a) or (b).

3 (h) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or  
 4 construction relating to such operations shall not be a basis for an exception under ORS 197.732  
 5 (2)(a) or (b).

6 (i) One manufactured dwelling or recreational vehicle, or the temporary residential use of an  
 7 existing building, in conjunction with an existing dwelling as a temporary use for the term of a  
 8 hardship suffered by the existing resident or a relative of the resident. Within three months of the  
 9 end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demol-  
 10 ished or, in the case of an existing building, the building shall be removed, demolished or returned  
 11 to an allowed nonresidential use. The governing body or its designee shall provide for periodic re-  
 12 view of the hardship claimed under this paragraph. A temporary residence approved under this  
 13 paragraph is not eligible for replacement under paragraph (q) of this subsection.

14 (j) Climbing and passing lanes within the right of way existing as of July 1, 1987.

15 (k) Reconstruction or modification of public roads and highways, including the placement of  
 16 utility facilities overhead and in the subsurface of public roads and highways along the public right  
 17 of way, but not including the addition of travel lanes, where no removal or displacement of buildings  
 18 would occur, or no new land parcels result.

19 (L) Temporary public road and highway detours that will be abandoned and restored to original  
 20 condition or use at such time as no longer needed.

21 (m) Minor betterment of existing public road and highway related facilities, such as maintenance  
 22 yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous  
 23 public-owned property utilized to support the operation and maintenance of public roads and high-  
 24 ways.

25 (n) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has  
 26 been listed in a county inventory as historic property as defined in ORS 358.480.

27 (o) Creation, restoration or enhancement of wetlands.

28 (p) A winery, as described in ORS 215.452.

29 (q) Alteration, restoration or replacement of a lawfully established dwelling that:

30 (A) Has intact exterior walls and roof structure;

31 (B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to  
 32 a sanitary waste disposal system;

33 (C) Has interior wiring for interior lights;

34 (D) Has a heating system; and

35 (E) In the case of replacement:

36 (i) Is removed, demolished or converted to an allowable nonresidential use within three months  
 37 of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of  
 38 the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable  
 39 siting standards. However, the standards shall not be applied in a manner that prohibits the siting  
 40 of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned  
 41 for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the  
 42 deed records for the county where the property is located a deed restriction prohibiting the siting  
 43 of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless  
 44 a statement of release is placed in the deed records for the county. The release shall be signed by  
 45 the county or its designee and state that the provisions of this paragraph regarding replacement

1 dwellings have changed to allow the siting of another dwelling. The county planning director or the  
 2 director's designee shall maintain a record of the lots and parcels that do not qualify for the siting  
 3 of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions  
 4 and release statements filed under this paragraph; and

5 (ii) For which the applicant has requested a deferred replacement permit, is removed or demol-  
 6 ished within three months after the deferred replacement permit is issued. A deferred replacement  
 7 permit allows construction of the replacement dwelling at any time. If, however, the established  
 8 dwelling is not removed or demolished within three months after the deferred replacement permit  
 9 is issued, the permit becomes void. The replacement dwelling must comply with applicable building  
 10 codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to  
 11 siting at the time of construction. A deferred replacement permit may not be transferred, by sale  
 12 or otherwise, except by the applicant to the spouse or a child of the applicant.

13 (r) Farm stands if:

14 (A) The structures are designed and used for the sale of farm crops or livestock grown on the  
 15 farm operation, or grown on the farm operation and other farm operations in the local agricultural  
 16 area, including the sale of retail incidental items and fee-based activity to promote the sale of farm  
 17 crops or livestock sold at the farm stand if the annual sale of incidental items and fees from pro-  
 18 motional activity do not make up more than 25 percent of the total annual sales of the farm stand;  
 19 and

20 (B) The farm stand does not include structures designed for occupancy as a residence or for  
 21 activity other than the sale of farm crops or livestock and does not include structures for banquets,  
 22 public gatherings or public entertainment.

23 (s) An armed forces reserve center, if the center is within one-half mile of a community college.  
 24 For purposes of this paragraph, "armed forces reserve center" includes an armory or National  
 25 Guard support facility.

26 (t) A site for the takeoff and landing of model aircraft, including such buildings or facilities as  
 27 may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor  
 28 area or placed on a permanent foundation unless the building or facility preexisted the use approved  
 29 under this paragraph. The site shall not include an aggregate surface or hard surface area unless  
 30 the surface preexisted the use approved under this paragraph. An owner of property used for the  
 31 purpose authorized in this paragraph may charge a person operating the use on the property rent  
 32 for the property. An operator may charge users of the property a fee that does not exceed the  
 33 operator's cost to maintain the property, buildings and facilities. As used in this paragraph, "model  
 34 aircraft" means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is  
 35 used or intended to be used for flight and is controlled by radio, lines or design by a person on the  
 36 ground.

37 (u) A facility for the processing of farm crops, or the production of biofuel as defined in ORS  
 38 315.141, that is located on a farm operation that provides at least one-quarter of the farm crops  
 39 processed at the facility. The building established for the processing facility shall not exceed 10,000  
 40 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm  
 41 use or devote more than 10,000 square feet to the processing activities within another building  
 42 supporting farm uses. A processing facility shall comply with all applicable siting standards but the  
 43 standards shall not be applied in a manner that prohibits the siting of the processing facility.

44 (v) Fire service facilities providing rural fire protection services.

45 (w) Irrigation **reservoirs**, canals, delivery lines and *[those structures and accessory operational*

1 *facilities associated with] any other structures or facilities managed, operated or maintained*  
 2 **by** a district as defined in ORS 540.505.

3 (x) Utility facility service lines. Utility facility service lines are utility lines and accessory fa-  
 4 cilities or structures that end at the point where the utility service is received by the customer and  
 5 that are located on one or more of the following:

6 (A) A public right of way;

7 (B) Land immediately adjacent to a public right of way, provided the written consent of all ad-  
 8 jacent property owners has been obtained; or

9 (C) The property to be served by the utility.

10 (y) Subject to the issuance of a license, permit or other approval by the Department of Envi-  
 11 ronmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with  
 12 rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application  
 13 of reclaimed water, agricultural or industrial process water or biosolids for agricultural,  
 14 horticultural or silvicultural production, or for irrigation in connection with a use allowed in an  
 15 exclusive farm use zone under this chapter.

16 (2) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition),  
 17 the following uses may be established in any area zoned for exclusive farm use subject to ORS  
 18 215.296:

19 (a) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest  
 20 product on a lot or parcel that is managed as part of a farm operation or woodlot if the farm op-  
 21 eration or woodlot:

22 (A) Consists of 20 or more acres; and

23 (B) Is not smaller than the average farm or woodlot in the county producing at least \$2,500 in  
 24 annual gross income from the crops, livestock or forest products to be raised on the farm operation  
 25 or woodlot.

26 (b) A primary dwelling in conjunction with farm use or the propagation or harvesting of a forest  
 27 product on a lot or parcel that is managed as part of a farm operation or woodlot smaller than re-  
 28 quired under paragraph (a) of this subsection, if the lot or parcel:

29 (A) Has produced at least \$20,000 in annual gross farm income in two consecutive calendar  
 30 years out of the three calendar years before the year in which the application for the dwelling was  
 31 made or is planted in perennials capable of producing upon harvest an average of at least \$20,000  
 32 in annual gross farm income; or

33 (B) Is a woodlot capable of producing an average over the growth cycle of \$20,000 in gross an-  
 34 nual income.

35 (c) Commercial activities that are in conjunction with farm use, including the processing of farm  
 36 crops into biofuel not permitted under ORS 215.203 (2)(b)(L) or subsection (1)(u) of this section.

37 (d) Operations conducted for:

38 (A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas  
 39 as defined by ORS 520.005, not otherwise permitted under subsection (1)(g) of this section;

40 (B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface re-  
 41 sources subject to ORS 215.298;

42 (C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

43 (D) Processing of other mineral resources and other subsurface resources.

44 (e) Community centers owned by a governmental agency or a nonprofit community organization  
 45 and operated primarily by and for residents of the local rural community, hunting and fishing pre-

1 serves, public and private parks, playgrounds and campgrounds. Subject to the approval of the  
2 county governing body or its designee, a private campground may provide yurts for overnight  
3 camping. No more than one-third or a maximum of 10 campsites, whichever is smaller, may include  
4 a yurt. The yurt shall be located on the ground or on a wood floor with no permanent foundation.  
5 Upon request of a county governing body, the Land Conservation and Development Commission may  
6 provide by rule for an increase in the number of yurts allowed on all or a portion of the  
7 campgrounds in a county if the commission determines that the increase will comply with the stan-  
8 dards described in ORS 215.296 (1). A public park or campground may be established as provided  
9 under ORS 195.120. As used in this paragraph, "yurt" means a round, domed shelter of cloth or  
10 canvas on a collapsible frame with no plumbing, sewage disposal hookup or internal cooking appli-  
11 ance.

12 (f) Golf courses on land determined not to be high-value farmland as defined in ORS 195.300.

13 (g) Commercial utility facilities for the purpose of generating power for public use by sale.

14 (h) Personal-use airports for airplanes and helicopter pads, including associated hangar, main-  
15 tenance and service facilities. A personal-use airport as used in this section means an airstrip re-  
16 stricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional  
17 basis, by invited guests, and by commercial aviation activities in connection with agricultural op-  
18 erations. No aircraft may be based on a personal-use airport other than those owned or controlled  
19 by the owner of the airstrip. Exceptions to the activities permitted under this definition may be  
20 granted through waiver action by the Oregon Department of Aviation in specific instances. A  
21 personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted sub-  
22 ject to any applicable rules of the Oregon Department of Aviation.

23 (i) A facility for the primary processing of forest products, provided that such facility is found  
24 to not seriously interfere with accepted farming practices and is compatible with farm uses de-  
25 scribed in ORS 215.203 (2). Such a facility may be approved for a one-year period which is  
26 renewable. These facilities are intended to be only portable or temporary in nature. The primary  
27 processing of a forest product, as used in this section, means the use of a portable chipper or stud  
28 mill or other similar methods of initial treatment of a forest product in order to enable its shipment  
29 to market. Forest products, as used in this section, means timber grown upon a parcel of land or  
30 contiguous land where the primary processing facility is located.

31 (j) A site for the disposal of solid waste approved by the governing body of a city or county or  
32 both and for which a permit has been granted under ORS 459.245 by the Department of Environ-  
33 mental Quality together with equipment, facilities or buildings necessary for its operation.

34 (k) Dog kennels.

35 (L) Residential homes as defined in ORS 197.660, in existing dwellings.

36 (m) The propagation, cultivation, maintenance and harvesting of aquatic species that are not  
37 under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species  
38 shall not include any species under quarantine by the State Department of Agriculture or the United  
39 States Department of Agriculture. The county shall provide notice of all applications under this  
40 paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the  
41 county's land use regulations but shall be mailed at least 20 calendar days prior to any administra-  
42 tive decision or initial public hearing on the application.

43 (n) Home occupations as provided in ORS 215.448.

44 (o) Transmission towers over 200 feet in height.

45 (p) Construction of additional passing and travel lanes requiring the acquisition of right of way

1 but not resulting in the creation of new land parcels.

2 (q) Reconstruction or modification of public roads and highways involving the removal or dis-  
3 placement of buildings but not resulting in the creation of new land parcels.

4 (r) Improvement of public road and highway related facilities such as maintenance yards, weigh  
5 stations and rest areas, where additional property or right of way is required but not resulting in  
6 the creation of new land parcels.

7 (s) A destination resort that is approved consistent with the requirements of any statewide  
8 planning goal relating to the siting of a destination resort.

9 (t) Room and board arrangements for a maximum of five unrelated persons in existing resi-  
10 dences.

11 (u) A living history museum related to resource based activities owned and operated by a gov-  
12 ernmental agency or a local historical society, together with limited commercial activities and fa-  
13 cilities that are directly related to the use and enjoyment of the museum and located within  
14 authentic buildings of the depicted historic period or the museum administration building, if areas  
15 other than an exclusive farm use zone cannot accommodate the museum and related activities or if  
16 the museum administration buildings and parking lot are located within one quarter mile of the  
17 metropolitan urban growth boundary. As used in this paragraph:

18 (A) "Living history museum" means a facility designed to depict and interpret everyday life and  
19 culture of some specific historic period using authentic buildings, tools, equipment and people to  
20 simulate past activities and events; and

21 (B) "Local historical society" means the local historical society, recognized as such by the  
22 county governing body and organized under ORS chapter 65.

23 (v) Operations for the extraction and bottling of water.

24 (w) An aerial fireworks display business that has been in continuous operation at its current  
25 location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's  
26 permit to sell or provide fireworks.

27 (x) A landscape contracting business, as defined in ORS 671.520, or a business providing land-  
28 scape architecture services, as described in ORS 671.318, if the business is pursued in conjunction  
29 with the growing and marketing of nursery stock on the land that constitutes farm use.

30 (y) Public or private schools for kindergarten through grade 12, including all buildings essential  
31 to the operation of a school, primarily for residents of the rural area in which the school is located.

32 (3) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition),  
33 a single-family residential dwelling not provided in conjunction with farm use may be established  
34 on a lot or parcel with soils predominantly in capability classes IV through VIII as determined by  
35 the Agricultural Capability Classification System in use by the United States Department of Agri-  
36 culture Soil Conservation Service on October 15, 1983. A proposed dwelling is subject to approval  
37 of the governing body or its designee in any area zoned for exclusive farm use upon written findings  
38 showing all of the following:

39 (a) The dwelling or activities associated with the dwelling will not force a significant change in  
40 or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use.

41 (b) The dwelling is situated upon generally unsuitable land for the production of farm crops and  
42 livestock, considering the terrain, adverse soil or land conditions, drainage and flooding, location  
43 and size of the tract. A lot or parcel shall not be considered unsuitable solely because of its size  
44 or location if it can reasonably be put to farm use in conjunction with other land.

45 (c) Complies with such other conditions as the governing body or its designee considers neces-

1 sary.

2 (4) In counties that have adopted marginal lands provisions under ORS 197.247 (1991 Edition),  
3 one single-family dwelling, not provided in conjunction with farm use, may be established in any  
4 area zoned for exclusive farm use on a lot or parcel described in subsection (7) of this section that  
5 is not larger than three acres upon written findings showing:

6 (a) The dwelling or activities associated with the dwelling will not force a significant change in  
7 or significantly increase the cost of accepted farming practices on nearby lands devoted to farm use;

8 (b) If the lot or parcel is located within the Willamette River Greenway, a floodplain or a  
9 geological hazard area, the dwelling complies with conditions imposed by local ordinances relating  
10 specifically to the Willamette River Greenway, floodplains or geological hazard areas, whichever is  
11 applicable; and

12 (c) The dwelling complies with other conditions considered necessary by the governing body or  
13 its designee.

14 (5) Upon receipt of an application for a permit under subsection (4) of this section, the governing  
15 body shall notify:

16 (a) Owners of land that is within 250 feet of the lot or parcel on which the dwelling will be es-  
17 tablished; and

18 (b) Persons who have requested notice of such applications and who have paid a reasonable fee  
19 imposed by the county to cover the cost of such notice.

20 (6) The notice required in subsection (5) of this section shall specify that persons have 15 days  
21 following the date of postmark of the notice to file a written objection on the grounds only that the  
22 dwelling or activities associated with it would force a significant change in or significantly increase  
23 the cost of accepted farming practices on nearby lands devoted to farm use. If no objection is re-  
24 ceived, the governing body or its designee shall approve or disapprove the application. If an ob-  
25 jection is received, the governing body shall set the matter for hearing in the manner prescribed in  
26 ORS 215.402 to 215.438. The governing body may charge the reasonable costs of the notice required  
27 by subsection (5)(a) of this section to the applicant for the permit requested under subsection (4) of  
28 this section.

29 (7) Subsection (4) of this section applies to a lot or parcel lawfully created between January 1,  
30 1948, and July 1, 1983. For the purposes of this section:

31 (a) Only one lot or parcel exists if:

32 (A) A lot or parcel described in this section is contiguous to one or more lots or parcels de-  
33 scribed in this section; and

34 (B) On July 1, 1983, greater than possessory interests are held in those contiguous lots, parcels  
35 or lots and parcels by the same person, spouses or a single partnership or business entity, separately  
36 or in tenancy in common.

37 (b) "Contiguous" means lots, parcels or lots and parcels that have a common boundary, including  
38 but not limited to, lots, parcels or lots and parcels separated only by a public road.

39 (8) A person who sells or otherwise transfers real property in an exclusive farm use zone may  
40 retain a life estate in a dwelling on that property and in a tract of land under and around the  
41 dwelling.

42 (9) No final approval of a nonfarm use under this section shall be given unless any additional  
43 taxes imposed upon the change in use have been paid.

44 (10) Roads, highways and other transportation facilities and improvements not allowed under  
45 subsections (1) and (2) of this section may be established, subject to the approval of the governing

1 body or its designee, in areas zoned for exclusive farm use subject to:

2 (a) Adoption of an exception to the goal related to agricultural lands and to any other applicable  
3 goal with which the facility or improvement does not comply; or

4 (b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development  
5 Commission as provided in section 3, chapter 529, Oregon Laws 1993.

6 **SECTION 2.** ORS 215.283 is amended to read:

7 215.283. (1) The following uses may be established in any area zoned for exclusive farm use:

8 (a) Churches and cemeteries in conjunction with churches.

9 (b) The propagation or harvesting of a forest product.

10 (c) Utility facilities necessary for public service, including wetland waste treatment systems but  
11 not including commercial facilities for the purpose of generating electrical power for public use by  
12 sale or transmission towers over 200 feet in height. A utility facility necessary for public service  
13 may be established as provided in ORS 215.275.

14 (d) A dwelling on real property used for farm use if the dwelling is occupied by a relative of the  
15 farm operator or the farm operator's spouse, which means a child, parent, stepparent, grandchild,  
16 grandparent, stepgrandparent, sibling, stepsibling, niece, nephew or first cousin of either, if the farm  
17 operator does or will require the assistance of the relative in the management of the farm use and  
18 the dwelling is located on the same lot or parcel as the dwelling of the farm operator.  
19 Notwithstanding ORS 92.010 to 92.192 or the minimum lot or parcel size requirements under ORS  
20 215.780, if the owner of a dwelling described in this paragraph obtains construction financing or  
21 other financing secured by the dwelling and the secured party forecloses on the dwelling, the se-  
22 cured party may also foreclose on the homesite, as defined in ORS 308A.250, and the foreclosure  
23 shall operate as a partition of the homesite to create a new parcel.

24 (e) Primary or accessory dwellings and other buildings customarily provided in conjunction with  
25 farm use.

26 (f) Operations for the exploration for and production of geothermal resources as defined by ORS  
27 522.005 and oil and gas as defined by ORS 520.005, including the placement and operation of  
28 compressors, separators and other customary production equipment for an individual well adjacent  
29 to the wellhead. Any activities or construction relating to such operations shall not be a basis for  
30 an exception under ORS 197.732 (2)(a) or (b).

31 (g) Operations for the exploration for minerals as defined by ORS 517.750. Any activities or  
32 construction relating to such operations shall not be a basis for an exception under ORS 197.732  
33 (2)(a) or (b).

34 (h) Climbing and passing lanes within the right of way existing as of July 1, 1987.

35 (i) Reconstruction or modification of public roads and highways, including the placement of  
36 utility facilities overhead and in the subsurface of public roads and highways along the public right  
37 of way, but not including the addition of travel lanes, where no removal or displacement of buildings  
38 would occur, or no new land parcels result.

39 (j) Temporary public road and highway detours that will be abandoned and restored to original  
40 condition or use at such time as no longer needed.

41 (k) Minor betterment of existing public road and highway related facilities such as maintenance  
42 yards, weigh stations and rest areas, within right of way existing as of July 1, 1987, and contiguous  
43 public-owned property utilized to support the operation and maintenance of public roads and high-  
44 ways.

45 (L) A replacement dwelling to be used in conjunction with farm use if the existing dwelling has



1 been listed in a county inventory as historic property as defined in ORS 358.480.

2 (m) Creation, restoration or enhancement of wetlands.

3 (n) A winery, as described in ORS 215.452.

4 (o) Farm stands if:

5 (A) The structures are designed and used for the sale of farm crops or livestock grown on the  
6 farm operation, or grown on the farm operation and other farm operations in the local agricultural  
7 area, including the sale of retail incidental items and fee-based activity to promote the sale of farm  
8 crops or livestock sold at the farm stand if the annual sale of incidental items and fees from pro-  
9 motional activity do not make up more than 25 percent of the total annual sales of the farm stand;  
10 and

11 (B) The farm stand does not include structures designed for occupancy as a residence or for  
12 activity other than the sale of farm crops or livestock and does not include structures for banquets,  
13 public gatherings or public entertainment.

14 (p) Alteration, restoration or replacement of a lawfully established dwelling that:

15 (A) Has intact exterior walls and roof structure;

16 (B) Has indoor plumbing consisting of a kitchen sink, toilet and bathing facilities connected to  
17 a sanitary waste disposal system;

18 (C) Has interior wiring for interior lights;

19 (D) Has a heating system; and

20 (E) In the case of replacement:

21 (i) Is removed, demolished or converted to an allowable nonresidential use within three months  
22 of the completion of the replacement dwelling. A replacement dwelling may be sited on any part of  
23 the same lot or parcel. A dwelling established under this paragraph shall comply with all applicable  
24 siting standards. However, the standards shall not be applied in a manner that prohibits the siting  
25 of the dwelling. If the dwelling to be replaced is located on a portion of the lot or parcel not zoned  
26 for exclusive farm use, the applicant, as a condition of approval, shall execute and record in the  
27 deed records for the county where the property is located a deed restriction prohibiting the siting  
28 of a dwelling on that portion of the lot or parcel. The restriction imposed shall be irrevocable unless  
29 a statement of release is placed in the deed records for the county. The release shall be signed by  
30 the county or its designee and state that the provisions of this paragraph regarding replacement  
31 dwellings have changed to allow the siting of another dwelling. The county planning director or the  
32 director's designee shall maintain a record of the lots and parcels that do not qualify for the siting  
33 of a new dwelling under the provisions of this paragraph, including a copy of the deed restrictions  
34 and release statements filed under this paragraph; and

35 (ii) For which the applicant has requested a deferred replacement permit, is removed or demol-  
36 ished within three months after the deferred replacement permit is issued. A deferred replacement  
37 permit allows construction of the replacement dwelling at any time. If, however, the established  
38 dwelling is not removed or demolished within three months after the deferred replacement permit  
39 is issued, the permit becomes void. The replacement dwelling must comply with applicable building  
40 codes, plumbing codes, sanitation codes and other requirements relating to health and safety or to  
41 siting at the time of construction. A deferred replacement permit may not be transferred, by sale  
42 or otherwise, except by the applicant to the spouse or a child of the applicant.

43 (q) A site for the takeoff and landing of model aircraft, including such buildings or facilities as  
44 may reasonably be necessary. Buildings or facilities shall not be more than 500 square feet in floor  
45 area or placed on a permanent foundation unless the building or facility preexisted the use approved

1 under this paragraph. The site shall not include an aggregate surface or hard surface area unless  
 2 the surface preexisted the use approved under this paragraph. An owner of property used for the  
 3 purpose authorized in this paragraph may charge a person operating the use on the property rent  
 4 for the property. An operator may charge users of the property a fee that does not exceed the  
 5 operator’s cost to maintain the property, buildings and facilities. As used in this paragraph, “model  
 6 aircraft” means a small-scale version of an airplane, glider, helicopter, dirigible or balloon that is  
 7 used or intended to be used for flight and is controlled by radio, lines or design by a person on the  
 8 ground.

9 (r) A facility for the processing of farm crops, or the production of biofuel as defined in ORS  
 10 315.141, that is located on a farm operation that provides at least one-quarter of the farm crops  
 11 processed at the facility. The building established for the processing facility shall not exceed 10,000  
 12 square feet of floor area exclusive of the floor area designated for preparation, storage or other farm  
 13 use or devote more than 10,000 square feet to the processing activities within another building  
 14 supporting farm uses. A processing facility shall comply with all applicable siting standards but the  
 15 standards shall not be applied in a manner that prohibits the siting of the processing facility.

16 (s) Fire service facilities providing rural fire protection services.

17 (t) Irrigation **reservoirs**, canals, delivery lines and [*those structures and accessory operational*  
 18 *facilities associated with*] **any other structures or facilities managed, operated or maintained**  
 19 **by** a district as defined in ORS 540.505.

20 (u) Utility facility service lines. Utility facility service lines are utility lines and accessory fa-  
 21 cilities or structures that end at the point where the utility service is received by the customer and  
 22 that are located on one or more of the following:

23 (A) A public right of way;

24 (B) Land immediately adjacent to a public right of way, provided the written consent of all ad-  
 25 jacent property owners has been obtained; or

26 (C) The property to be served by the utility.

27 (v) Subject to the issuance of a license, permit or other approval by the Department of Envi-  
 28 ronmental Quality under ORS 454.695, 459.205, 468B.050, 468B.053 or 468B.055, or in compliance with  
 29 rules adopted under ORS 468B.095, and as provided in ORS 215.246 to 215.251, the land application  
 30 of reclaimed water, agricultural or industrial process water or biosolids for agricultural,  
 31 horticultural or silvicultural production, or for irrigation in connection with a use allowed in an  
 32 exclusive farm use zone under this chapter.

33 (w) A county law enforcement facility that lawfully existed on August 20, 2002, and is used to  
 34 provide rural law enforcement services primarily in rural areas, including parole and post-prison  
 35 supervision, but not including a correctional facility as defined under ORS 162.135.

36 (2) The following nonfarm uses may be established, subject to the approval of the governing body  
 37 or its designee in any area zoned for exclusive farm use subject to ORS 215.296:

38 (a) Commercial activities that are in conjunction with farm use, including the processing of farm  
 39 crops into biofuel not permitted under ORS 215.203 (2)(b)(L) or subsection (1)(r) of this section.

40 (b) Operations conducted for:

41 (A) Mining and processing of geothermal resources as defined by ORS 522.005 and oil and gas  
 42 as defined by ORS 520.005 not otherwise permitted under subsection (1)(f) of this section;

43 (B) Mining, crushing or stockpiling of aggregate and other mineral and other subsurface re-  
 44 sources subject to ORS 215.298;

45 (C) Processing, as defined by ORS 517.750, of aggregate into asphalt or portland cement; and

1 (D) Processing of other mineral resources and other subsurface resources.

2 (c) Private parks, playgrounds, hunting and fishing preserves and campgrounds. Subject to the  
3 approval of the county governing body or its designee, a private campground may provide yurts for  
4 overnight camping. No more than one-third or a maximum of 10 campsites, whichever is smaller,  
5 may include a yurt. The yurt shall be located on the ground or on a wood floor with no permanent  
6 foundation. Upon request of a county governing body, the Land Conservation and Development  
7 Commission may provide by rule for an increase in the number of yurts allowed on all or a portion  
8 of the campgrounds in a county if the commission determines that the increase will comply with the  
9 standards described in ORS 215.296 (1). As used in this paragraph, "yurt" means a round, domed  
10 shelter of cloth or canvas on a collapsible frame with no plumbing, sewage disposal hookup or  
11 internal cooking appliance.

12 (d) Parks and playgrounds. A public park may be established consistent with the provisions of  
13 ORS 195.120.

14 (e) Community centers owned by a governmental agency or a nonprofit community organization  
15 and operated primarily by and for residents of the local rural community. A community center au-  
16 thorized under this paragraph may provide services to veterans, including but not limited to emer-  
17 gency and transitional shelter, preparation and service of meals, vocational and educational  
18 counseling and referral to local, state or federal agencies providing medical, mental health, disability  
19 income replacement and substance abuse services, only in a facility that is in existence on January  
20 1, 2006. The services may not include direct delivery of medical, mental health, disability income  
21 replacement or substance abuse services.

22 (f) Golf courses on land determined not to be high-value farmland, as defined in ORS 195.300.

23 (g) Commercial utility facilities for the purpose of generating power for public use by sale.

24 (h) Personal-use airports for airplanes and helicopter pads, including associated hangar, main-  
25 tenance and service facilities. A personal-use airport, as used in this section, means an airstrip re-  
26 stricted, except for aircraft emergencies, to use by the owner, and, on an infrequent and occasional  
27 basis, by invited guests, and by commercial aviation activities in connection with agricultural op-  
28 erations. No aircraft may be based on a personal-use airport other than those owned or controlled  
29 by the owner of the airstrip. Exceptions to the activities permitted under this definition may be  
30 granted through waiver action by the Oregon Department of Aviation in specific instances. A  
31 personal-use airport lawfully existing as of September 13, 1975, shall continue to be permitted sub-  
32 ject to any applicable rules of the Oregon Department of Aviation.

33 (i) Home occupations as provided in ORS 215.448.

34 (j) A facility for the primary processing of forest products, provided that such facility is found  
35 to not seriously interfere with accepted farming practices and is compatible with farm uses de-  
36 scribed in ORS 215.203 (2). Such a facility may be approved for a one-year period which is  
37 renewable. These facilities are intended to be only portable or temporary in nature. The primary  
38 processing of a forest product, as used in this section, means the use of a portable chipper or stud  
39 mill or other similar methods of initial treatment of a forest product in order to enable its shipment  
40 to market. Forest products, as used in this section, means timber grown upon a parcel of land or  
41 contiguous land where the primary processing facility is located.

42 (k) A site for the disposal of solid waste approved by the governing body of a city or county or  
43 both and for which a permit has been granted under ORS 459.245 by the Department of Environ-  
44 mental Quality together with equipment, facilities or buildings necessary for its operation.

45 (L) One manufactured dwelling or recreational vehicle, or the temporary residential use of an

1 existing building, in conjunction with an existing dwelling as a temporary use for the term of a  
 2 hardship suffered by the existing resident or a relative of the resident. Within three months of the  
 3 end of the hardship, the manufactured dwelling or recreational vehicle shall be removed or demol-  
 4 ished or, in the case of an existing building, the building shall be removed, demolished or returned  
 5 to an allowed nonresidential use. The governing body or its designee shall provide for periodic re-  
 6 view of the hardship claimed under this paragraph. A temporary residence approved under this  
 7 paragraph is not eligible for replacement under subsection (1)(p) of this section.

8 (m) Transmission towers over 200 feet in height.

9 (n) Dog kennels.

10 (o) Residential homes as defined in ORS 197.660, in existing dwellings.

11 (p) The propagation, cultivation, maintenance and harvesting of aquatic species that are not  
 12 under the jurisdiction of the State Fish and Wildlife Commission or insect species. Insect species  
 13 shall not include any species under quarantine by the State Department of Agriculture or the United  
 14 States Department of Agriculture. The county shall provide notice of all applications under this  
 15 paragraph to the State Department of Agriculture. Notice shall be provided in accordance with the  
 16 county's land use regulations but shall be mailed at least 20 calendar days prior to any administra-  
 17 tive decision or initial public hearing on the application.

18 (q) Construction of additional passing and travel lanes requiring the acquisition of right of way  
 19 but not resulting in the creation of new land parcels.

20 (r) Reconstruction or modification of public roads and highways involving the removal or dis-  
 21 placement of buildings but not resulting in the creation of new land parcels.

22 (s) Improvement of public road and highway related facilities, such as maintenance yards, weigh  
 23 stations and rest areas, where additional property or right of way is required but not resulting in  
 24 the creation of new land parcels.

25 (t) A destination resort that is approved consistent with the requirements of any statewide  
 26 planning goal relating to the siting of a destination resort.

27 (u) Room and board arrangements for a maximum of five unrelated persons in existing resi-  
 28 dences.

29 (v) Operations for the extraction and bottling of water.

30 (w) Expansion of existing county fairgrounds and activities directly relating to county  
 31 fairgrounds governed by county fair boards established pursuant to ORS 565.210.

32 (x) A living history museum related to resource based activities owned and operated by a gov-  
 33 ernmental agency or a local historical society, together with limited commercial activities and fa-  
 34 cilities that are directly related to the use and enjoyment of the museum and located within  
 35 authentic buildings of the depicted historic period or the museum administration building, if areas  
 36 other than an exclusive farm use zone cannot accommodate the museum and related activities or if  
 37 the museum administration buildings and parking lot are located within one quarter mile of an ur-  
 38 ban growth boundary. As used in this paragraph:

39 (A) "Living history museum" means a facility designed to depict and interpret everyday life and  
 40 culture of some specific historic period using authentic buildings, tools, equipment and people to  
 41 simulate past activities and events; and

42 (B) "Local historical society" means the local historical society recognized by the county gov-  
 43 erning body and organized under ORS chapter 65.

44 (y) An aerial fireworks display business that has been in continuous operation at its current  
 45 location within an exclusive farm use zone since December 31, 1986, and possesses a wholesaler's

1 permit to sell or provide fireworks.

2 (z) A landscape contracting business, as defined in ORS 671.520, or a business providing land-  
3 scape architecture services, as described in ORS 671.318, if the business is pursued in conjunction  
4 with the growing and marketing of nursery stock on the land that constitutes farm use.

5 (aa) Public or private schools for kindergarten through grade 12, including all buildings essential  
6 to the operation of a school, primarily for residents of the rural area in which the school is located.

7 (3) Roads, highways and other transportation facilities and improvements not allowed under  
8 subsections (1) and (2) of this section may be established, subject to the approval of the governing  
9 body or its designee, in areas zoned for exclusive farm use subject to:

10 (a) Adoption of an exception to the goal related to agricultural lands and to any other applicable  
11 goal with which the facility or improvement does not comply; or

12 (b) ORS 215.296 for those uses identified by rule of the Land Conservation and Development  
13 Commission as provided in section 3, chapter 529, Oregon Laws 1993.

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